

CRM-M-2524-2024



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-2524-2024 (O&M)

Reserved on: 06.02.2024.

Pronounced on: 29.02.2024.

Savita

... Petitioner

Versus

State of Haryana

...Respondent

CRM-M-411-2024 (O&M)

Sub Inspector/SHO Rajbir Singh

... Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Rakesh Nehra, Sr. Advocate with
Mr. Vikalp Hooda, Advocate
for the petitioner (In CRM-M-2524-2024).

Ms. Shivani Jaglan, Advocate
for the petitioner (In CRM-M-411-2024).

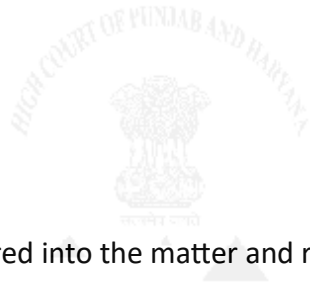
Mr. R.K. Singla, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
205	14.11.2023	Bond Kalan, District Charkhi Dadri, Haryana.	7, 7A, 13(1) and 13(2) of the Prevention of Corruption Act, 1988 and Sections 384, 389/34 IPC (added later on).

1. Ms. Savita, who was an Assistant Sub Inspector of Police, and Rajbir Singh, who was a Sub Inspector of Police and posted as SHO, apprehending arrest in the above captioned FIR, have come up before this court under Section 438 CrPC seeking anticipatory bail, on the allegations of misusing their official positions and conspiring with the victim's Advocate, and probably also with the alleged victim of rape, and facilitated a compromise between the victim and the accused for Rs. Twelve lacs, out of which the Police officials and the Advocate received Rs. Eight lacs, and after the accused agreed to pay the money, the victim refused to undergo any medical examination and finally in her statement recorded under 164 CrPC by the Judicial Magistrate, stated on oath that nothing was done to her; however when the higher police officials heard about

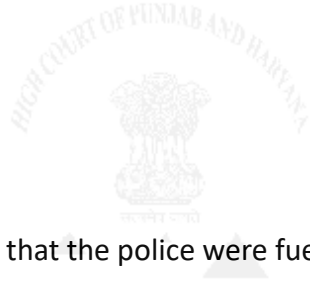
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the misdeeds, they inquired into the matter and registered the present FIR.

2. As per petitions, both the petitioners have clean antecedents.
3. I have heard counsel for both the parties and gone through the record of both the petitions.
4. Petitioners' Advocates pray for bail by imposing any stringent conditions including voluntary declaration of their assets as well as of their spouses to demonstrate their honesty. The petitioners' counsel contended that custodial interrogation and pre-trial incarceration would cause an irreversible injustice to the petitioners and family.
5. The Counsel appearing for the State has strenuously opposed the bail and submitted that given the serious nature of allegations, the petitioners' custodial interrogation is necessary for recovery of the share they had received out of Rs. Twelve lacs paid by the accused and to understand their modus operandi and find out how many more persons were enticed, and honey trapped.
6. The facts of the case are taken from FIR (Annexure P-1, in CRM-M-411-2024), which was registered on 14.11.2023 based on a complaint made by Karambir Singh, Security In-charge, Office of Superintendent of Police, Charkhi Dadri. On 21.7.2022, i.e., around one year and three months earlier to the registration of the FIR captioned above, another FIR No. 136 dated 19.7.2022 under Sections 376, 506 IPC was registered at the instance of the victim 'K', wife of Vikki against Jitender Kumar alias Subla. The complainant received secret information that a dubious compromise had occurred in FIR No. 136 under section 376 IPC. The petitioner ASI Savita, and Smt. Naresh, Advocate of Charkhi Dadri, and one Head Constable, Sanjay Kumar, had conspired and extorted Rs. Twelve Lacs (INR ₹12,00,000/-) from Jitender Kumar, who had been arraigned as an accused in FIR No. 136 under 376 IPC. The victim 'K', SI/SHO Rajbir Singh (No. 526) (petitioner), ASI Savita (No. 298) (petitioner), HC Sanjay, and Smt. Naresh, the Advocate, distributed the hush money, out of which the victim 'K' got Rs. four lacs, and the remaining eight lacs were divided amongst others. After that, the victim 'K' recorded her statement under Section 164 CrPC, in which she resiled from the allegations of rape by Jitender, as mentioned in her complaint, and even refused to undergo her medical examination and stated that nothing had happened with her. The secret informer also said that to accomplish the compromise, the victim, 'K,' was made to sleep in the house of Smt. Naresh Advocate during the night so that she does not change her mind. The informer further said that the compromise had taken place because of the involvement of HC Sanjay and Smt. Naresh, Advocate, and it had become the talk of the town, and

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people were complaining that the police were fueling the corruption.

7. After receipt of secret information that Jitender Singh paid Rs.12,00,000/- to settle the dispute with victim 'K,' who had taken Rs.4,00,000/- also found involvement of four persons, namely ASI Savita, SI/SHO Rajbir Singh, Smt. Naresh, Advocate, and HC Sanjay had taken Rs.8 lac, *inter se*. Based on this secret information as well as *prima facie* inquiry and verification of allegations, FIR No.205 was registered on 14.11.2023, and an investigation commenced.

8. Counsel for the petitioners extensively argued the matters on many dates. Vide order dated 18.01.2024 passed in CRM-M-2524-2024, this Court stayed the arrest of petitioner-ASI Savita when the petitioner's counsel had stated that she would demonstrate her honesty by declaring her assets. Later, the same relief was given to co-accused SI/SHO Rajbir Singh vide order dated 23.01.2024 passed in CRM-M-411-2024. After that, the petitioners voluntarily complied with the said order and declared their assets and also stated that they would not claim such declarations as self-incrimination or violation of their rights under Articles 20 & 21 of the Constitution of India, Indian Evidence Act, or any other law in force. While passing the order dated 29.1.2024, this Court had also directed the State to file a fresh reply as per paragraph 6 of the order dated 18.1.2024. Paragraph 6 of the order dated 18.1.2024 reads as follows: -

"6. Considering the nature of allegations, this court feels appropriate that the concerned DySP file a specific reply by mentioning the following facts which are required to adjudicate this petition in a pure legal way: -

- (i) Copy of the initial FIR No.136 dated 19.07.2022 registered under Sections 376 & 506 IPC at Police Station Bond Kalan;
- (ii) Copy of the statement of victim 'K' recorded by the concerned Judicial Magistrate under Section 164 CrPC;
- (iii) Copy of police report filed for cancellation of FIR/closure of the FIR and photocopy of the order passed by the concerned Court explaining such closure report/cancellation report;
- (iv) What was the age of niece of Vikki-husband of victim 'K' who had accompanied to their home;
- (v) How much bribe amount is yet to be recovered from all the accused;
- (vi) How much bribe amount is yet to be recovered from the petitioner Savita".

9. After that, the concerned DySP filed a detailed reply dated 5.2.2024 and a translated copy of FIR No.136 dated 19.7.2022 (Annexure R-1). The said translated version of the FIR reads as follows: -

FIR No. 136 dated 19.07.2022 registered under Sections 376 & 506 IPC at Police Station Bond Kalan

That a complaint No. 454-5D dated 19.07.2022 has been received in PS

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Bond Kalan having following contents: -

“To, The SHO PS Bond Kalan. Application for taking legal action against Jitender @ Subla S / o Chander R / o Nimari, Charkhi Dadri. Sir, it is submitted that I Kajal age 21 years W/o Wikki caste Dhanak is resident of village Bond Kalan and was married on 15.10.2021. Jitender @ Subla, who is friend of my husband frequently visits our house and asked my husband to bring his wife to his home also. Today he called my husband on phone thrice and invites us to his house for tea. Thereafter, I, my husband along with niece Kiran went to his house where he was found alone. When we asked about his wife, he told us that she has gone to school and offered us cold water and asked my husband to go to Jamindar Furniture House and bring Rs. 1.5 lacs. My husband went to fetch the money and Jitender asked my niece to go in drawing room so that he may talk to me in person and left Kiran in the drawing room and returned back. I was sitting on a chair and he put his hand on my chest and waist and committed rape with me. After sometime my husband came and we return to our house and told everything to my husband. Strict action be taken against above Jitender @ Subla”.

10. The concerned DySP has also annexed a translated copy of the statement of Kajal (Annexure R-2) recorded under Section 164 CrPC, which reads as under: -

“3. FIR No. 136 dated 19.07.2022 registered under Sections 376 & 506 IPC at Police Station Bond Kalan

Ques: What is your name and age?

Ans: My name is Kajal age 21 years.

Ques: What is your educational qualification?

Ans: I am illiterate.

Ques: Whether you read or write Hindi?

Ans: Yes, I can only write my name in Hindi.

Ques: Are you recording this statement as per your will.

Ans: Yes

Statement of Kajal W/o Vikki age 21 years resident of Bond Kalan PS Bond kalan district Charkhi Dadri

'Stated that nothing has been done with me. I do not want to initiate any action and do not want to name anyone wrongly. Nothing wrong has been committed with me and I do not want to say anything more".

Identified by ASI Savita PS Bond Kalan

Sd/

CJM Charkhi Dardi

20.07.2022 at 01.45 PM

11. Given the fact that the victim 'K' did not allege any sexual act, as such, there is no requirement to conceal her identity because Section 228-A IPC applies only to the victim of certain offenses, including rape. When the victim 'K' had explicitly stated that nothing was done with her, as such, there is no bar to reveal her identity.

12. Based on the victim's statement, an SIT was constituted by the Superintendent of Police headed by DSP/HQ, Charkhi Dadri, and during the investigation, allegations made in FIR were found false, and accordingly, a cancellation report was prepared and filed. It would be appropriate to refer to the relevant portion of the said cancellation report

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(Annexure R-3), which reads as under: -

“2. ...Upon receipt of above complaint in the police station offence under section 376/506 is made out and thus instant FIR was got registered and initial investigation of the case was conducted by L/ASI Savita No. 278/RTK PS Bond Kalan. During investigation, victim was taken to GH Dadri for medical examination. However, victim refused to undergo sexual medical examination. On 20.07.2022, statement of victim was got recorded under section 164 Cr.P.C. in the learned Court. The victim stated in her statement recorded under section 164 Cr.P.C. that nothing has been done with me. I do not want to initiate any action and do not want to name anyone wrongly. Nothing wrong has been committed with me and I do not want to say anything. Victim was got counseled before the counseling Advocate in which she also stated that nothing wrong has happened to her. Thereafter, an SIT was constituted in the case by Superintendent of Police headed by Virender Singh HPS DSP/HQ, Charkhi Dadri and investigation in the case was conducted by SI Dilbag Singh I/C CIA under the supervision of SIT head. During investigation, allegations leveled in the FIR were found false. Verification in the case was conducted by DSP/HQ, Dadri and allegations in the FIR were found false. Hence, cancellation report has been prepared in the case and the same is being sent to higher authorities for acceptance”.

13. A perusal of the cancellation report explicitly points out that even the senior officers of the level of DySP conducted an investigation, and they found the allegations false. At that time, they were unaware of the conspiracy hatched by ASI Savita and SI/SHO Rajbir Singh, Smt. Naresh, Advocate, and HC Sanjay, etc.

14. On 5.10.2023, while hearing the victim on the cancellation report, the CJM, Charkhi Dadri, passed the following order,

“Cancellation report presented. It be checked and registered. Complainant Kajal appeared before the Court in person. The complainant stated that she is not satisfied with the police investigation and she wants to file a protest petition against the cancellation report. She further stated that she will file the protest petition on next date of hearing. Keeping in view her statement, present case is adjourned to 17.01.2024 for filing protest petition”.

15. On 13.01.2024, reply was filed in CRM-M-411-2024 in the present FIR. It would be relevant to refer to the relevant portion of the said reply dated 13.01.2024, filed by concerned DySP, which reads as under: -

“3. That during investigation of above mentioned case, In-charge Security, District Police Office, Charkhi Dadri intimated vide his report dated 21.07.2022 that Security Agent PS Bond Kalan has informed that during the night intervening 19.07.2022, accused Jitender along with Gajender @ Bunti son of Sawant Singh Rathi, Ex-Sarpanch Village Basana district Rohtak, AAA (Name withheld) Lady Advocate, Bar Association, Charkhi Dadri and HC Sanjay Kumar No. 48/DDR were present in the official room of L/ASI Savita No. 298/RTK at PS Bond Kalan and during this meeting the matter of above mentioned rape case was compromised in Rs. 12.00 lacs. Out of these 12.00 lacs, Rs. 4.00 lacs were handed over to victim XXX and remaining Rs. 8.00 lacs were shared by Insp. Rajbir Singh

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No. 526/RR, I/O of the case namely L/ASI Savita No. 298/RTK, HC Sanjay Kumar No. 48/DDR and Advocate Smt. Naresh. Thereafter, the victim was made to sleep in the house of AAA Lady Advocate, so that she may not be able to change her statement amounting to compromise in the case and later on 20.07.2022, statement of victim Kajal were got recorded u/s 164 in which she resiled from her earlier allegations leveled in FIR.

4. That upon receipt of said report Insp. Rajbir Singh No. 526/RR (Present petitioner), L/ASI Savita No. 298/RTK and HC Sanjay Kumar No. 48/DDR were placed under suspension and a regular departmental enquiry was initiated against that for their gravest act of misconduct, besides tarnishing the image of police in public. The enquiry officer held the petitioner and co-delinquents guilty of charges and the punishing authority awarded a punishment of reduction in rank from Inspector to Sub-Inspector to the petitioner vide order dated 21.02.2023. Co delinquent/accused L/ASI Savita No. 298/RTK and HC Sanjay Kumar No. 48/DDR were awarded a punishment of dismissal from service by Superintendent of Police, Charkhi Dadri vide order dated 09.03.2023. The delinquent/accused preferred appeals against the orders of dismissal from service and the same was reduced to reduction in their respective ranks. However, revision petition of co-accused/delinquents was dismissed by the Director General of Police, Haryana.

5. That the relevant departmental enquiry remained in process with higher authorities in connection with Appeals and Revision Petition filed by the accused/delinquents and after receipt of the same from the office of Director General of Police, Haryana, Superintendent of Police, Charkhi Dadri perused the file as well as source report against the delinquent/accused and sent the same to SHO PS Bond Kalan for taking necessary legal action case on 14.11.2023 as criminal offence was also made out in the matter, and hence instant case FIR No. 205 dated 14.11.2023, under Sections 7, 7A, 13(1), 13(2) of Prevention of Corruption Act (under sections 384,389,34 of IPC added later on) PS Bond Kalan was registered against the petitioner and co-accused.

6. That during the course of investigation conducted by the answering deponent, Jitender @ Subhla son of Chander Bhan resident of village Nimli, who was accused in case FIR No. 136 dated 19.07.2022 u/s 376/506 IPC PS Bond Kalan was joined in investigation on 20.11.2023 and his statement section 161 Cr.P.C. were recorded in which Jitender @Subhla has corroborated the allegations leveled against the petitioner in present FIR. Thereafter, during investigation co-accused AAA Lady Advocate, District Courts Charkhi Dadri was granted anticipatory bail by the learned Court of Additional Sessions Judge, Charkhi Dadri vide order dated 24.11.2023. During investigation statements of witnesses namely Amit son of Sukhbir resident of village Basana, Chanderbhan son of Sube Singh resident of village Nimali, Hardeep son of Sada Ram resident of Nimali were recorded on 11.12.2023, who have duly corroborated the allegations against the petitioner leveled in FIR and have categorically stated that they have provided the hush money Rs. 12,00,000/- to the accused to settle the FIR out of which Rs. 2,50,000/- were given to accused HC Sanjay Kumar in the room of SHO/petitioner.

7. That allegations against the petitioner/accused are grave and serious in nature and thus custodial interrogation of the petitioner is required to recover remaining bribe amount, and to ascertain the involvement of other accused and to unearth the entire modus-operandi of this dirty

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game. accused/ petitioner is the mastermind and main culprit under whose command the entire crime has been committed. It is further submitted that custodial interrogation of the petitioner is also required to proceed with the investigation in the scientific manner by getting Brain Mapping Test, Polygraph Test, etc. of the petitioner conducted, and to collect information about details of all his mobile phones through which he was maintaining nexus with rest of the accused persons and to recover these mobiles. The investigation of the case is at the initial stage and it would be difficult to unearth the entire network, if pre-arrest bail is granted to the petitioner, who is the main accused. The case is under investigation and no accused has been arrested so far.”

16. Adjudication of these bail petitions required peeping into the earlier FIR. To understand the modus operandi of the crime of sextortion committed against Jitender, it would be appropriate to assess the allegations made by victim 'K' in the FIR, which she later retracted in her statement under Section 164 CrPC. On 19.7.2022, 'K,' wife of Vikki, had complained to the SHO, Police Station Bond Kalan, Charkhi Dadri, against Jitender Kumar and had alleged that she was 21 years of age and was married to Vikki on 15.10.2021. It means she married Vikki around nine months before the alleged incident. She had alleged that her husband was a friend of Jitender, and on this account, Jitender used to visit their home on numerous occasions, and invited him and his wife to his house. On 19.7.2022, Jitender called Vikki, her husband, three times, inviting them over for a cup of tea. On this, 'K', her husband, and her husband's niece, went to his house. Upon reaching out, they asked Jitender about his wife's whereabouts, and he told them that his wife had gone to school. After that, Jitender offered them cold water and asked Vikki to visit a furniture house and bring Rs.1,50,000/-. On this, Vikki went to take that money. After that, Jitender told their niece to go to the drawing-room by telling her he needed to speak to 'K'. After moving niece to the drawing room, when Jitender returned to the room where 'K' was sitting, he moved his fingers on her waist and breast and committed rape upon her. After some time, her husband Vikki came, and then they returned to their home, where she told her husband about the occurrence. After that, they went to the Police Station and made the complaint above. Victim 'K' refused to undergo her medical examination, and when 'K' was produced before the CJM, Charkhi Dadri, she did not support the contents of the FIR. After that, an SIT was constituted, and a cancellation report was prepared on 19.10.2022.

17. A perusal of the report under Section 173 CrPC, seeking closure of the case, mentions that the SIT was constituted by the Superintendent of Police, which was headed by Virender Singh, DySP, and SI Dilbagh Singh, In-charge CIA. A reference to the sequence of events and the entire episode explicitly points out that none of these two officers were involved in the conspiracy or sextortion, and they were not even aware of

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any such compromise. They investigated the matter and did not find any truth in the allegations levelled by the victim 'K'.

18. To understand the nature of the crime, this Court vide order dated 18.1.2024 had directed the concerned DySP to point out the age of the niece of Vikki, who had accompanied 'K' to Jitender's house. In addition to the investigation conducted by the Special Investigation Team constituted by the Superintendent of Police, this Court wanted to analyse the veracity of allegations made by 'K.' In the reply dated 5.2.2024, the concerned DySP annexed a certificate dated 19.8.2017 issued by Middle Head, Government Sr. Secondary School, Koelpur-Khetawas (JJR) in respect of niece, wherein it is certified that as per the record of the school, her date of birth is 3.4.2005 and she was a student of seventh standard. Thus, on the date of incident, i.e., 19.7.2022, the age of their niece was 17 years, three months, and 16 days.

19. In the proximity of a young girl who had attended school, was more than seventeen years of age, and thus was not an infant who would be oblivious to her surroundings, it cannot be presumed that any voices, commotion, and change of behavior would not have come to the attention of her niece, leaving something amiss in the narrative and thereby affecting 'K's credibility. In addition to the age of the niece of K's husband, even the investigation conducted by SIT did not find any truth in the allegations of 'K' and closed the case.

20. Regarding the sextortion of money from Jitender Kumar @ Subla, he has not filed any complaint. It was the secret information on payment of hush money, based on which the police had initiated an inquiry, and later, he corroborated the allegations.

21. Although the petitioners are not entitled to bail on merits; however, they are entitled to protection under Article 14 of the Constitution of India because one of the similarly placed co-accused, Smt. Naresh, Advocate, was granted bail by the Additional Sessions Judge, Charkhi Dadri, vide order dated 24.11.2023 in CIS No.BA-671/23. In the said order, the Sessions Court had also discussed Section 126 of the Indian Evidence Act, i.e., the privileged relationship between the Advocate and her client. While granting bail to Smt. Naresh, Advocate, the concerned Court extensively dealt with every aspect. It concluded that the allegations are general. The said Advocate's implication was found suspicious when there was no prima facie evidence that suggested her active participation in unethical financial deals. However, Smt. Naresh, Advocate being a woman was never a primary consideration while giving bail. On an enquiry from the State, it is explicitly mentioned that the State of Haryana did not challenge the said order before this Court by filing an application for cancellation of bail. Paragraph 8 of the reply

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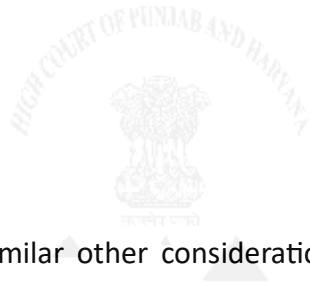
dated 13.1.2024 explicitly mentions that the petitioner's case is different from that of Smt. Naresh, Advocate, and as such, they are not entitled to bail on parity.

22. The petitioners are also entitled to bail on the grounds of parity, which flows from Article 14 of the Constitution of India and guarantees the equality before law and the equal protection of the laws within the territory of India as a fundamental right. Solely because the petitioners are police officers, they cannot be deprived of their fundamental rights and as such are entitled to bail on parity. On this ground alone, this Court is granting bail to the petitioners subject to the compliance of the conditions mentioned in this order.

23. In the reply dated 3.2.2024 filed by the concerned DySP, it is explicitly mentioned in paragraph 2(v) that no bribe amount has been recovered from any of the accused, and a total amount of Rs.12,00,000/- is to be recovered from the accused. It implies that nothing was recovered even from the lady Advocate, who was granted bail by the Sessions Court. The investigation be carried out to recover the money.

24. Further, in *Gurbaksh Singh Sibbia v State of Punjab*, 1980 (2) SCC 565, (Para 30), a Constitutional Bench of Supreme Court held that the bail decision must enter the cumulative effect of the variety of circumstances justifying the grant or refusal of bail. In *Kalyan Chandra Sarkar v Rajesh Ranjan @ Pappu Yadav*, 2005 (2) SCC 42, (Para 18) a three-member Bench of Supreme Court held that the persons accused of non-bailable offences are entitled to bail if the Court concerned concludes that the prosecution has failed to establish a prima facie case against him, or despite the existence of a prima facie case, the Court records reasons for its satisfaction for the need to release such person on bail, in the given fact situations. The rejection of bail does not preclude filing a subsequent application. The courts can release on bail, provided the circumstances then prevailing require, and a change in the fact situation. In *State of Rajasthan v Balchand*, AIR 1977 SC 2447, (Para 2 & 3), Supreme Court noticeably illustrated that the basic rule might perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the Court. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh when considering the question of jail. So also, the heinousness of the crime. In *Gudikanti Narasimhulu v Public Prosecutor*, (1978) 1 SCC 240, (Para 16), Supreme Court held that the delicate light of the law favors release unless countered by the negative criteria necessitating that course. In *Prahlad Singh Bhati v NCT, Delhi*, (2001) 4 SCC 280, Supreme Court highlighted one of the factors for bail to be the public or the State's

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immense interest and similar other considerations. In *Dataram Singh v State of Uttar Pradesh*, **2018:INSC:107 [Para 7]**, (2018) 3 SCC 22, (Para 6), Supreme Court held that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously, compassionately, and in a humane manner. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

25. While deciding bail petitions, the courts neither indict nor absolve the accused and just confine to the justification for pre-trial incarceration.

26. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborative and stringent conditions. In *Sushila Aggarwal v. State (NCT of Delhi)* **2020:INSC:106 [Para 92]**, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions. In *Sumit Mehta v. State of N.C.T. of Delhi*, (2013)15 SCC 570, Para 11, Supreme Court holds that while exercising power Under Section 438 of the Code, the Court is duty-bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police. While exercising utmost restraint, the Court can impose conditions countenancing its object as permissible under the law to ensure an uninterrupted and unhampered investigation.

27. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail, subject to the following terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

28. In *Madhu Tanwar v. State of Punjab*, **2023:PHHC:077618 [Para 10, 21]**, CRM-M-27097-2023, decided on 29-05-2023, this court observed,

[10] The exponential growth in technology and artificial intelligence has transformed identification techniques remarkably. Voice, gait, and facial recognition are incredibly sophisticated and pervasive. Impersonation, as we know it traditionally, has virtually become impossible. Thus, the remedy lies that whenever a judge or an officer believes that the accused might be a flight risk or has a history of fleeing from justice, then in such cases, appropriate conditions can be inserted that all the expenditure that shall be incurred to trace them, shall be recovered from such person, and the State shall have a lien over their assets to make good the loss.

[21] In this era when the knowledge revolution has just begun, to keep pace with exponential and unimaginable changes the technology has brought to human lives, it is only fitting that the dependence of the

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accused on surety is minimized by giving alternative options. Furthermore, there should be no insistence to provide permanent addresses when people either do not have permanent abodes or intend to re-locate.

29. Given above, provided the petitioners are not required in any other case, in the event of arrest, the petitioners shall be released on bail in the FIR captioned above, in the following terms:

(a). Petitioner(s) to furnish personal bond of Rs. Ten thousand (INR 10,000/-) each; AND

(b) To give one surety of Rs. Twenty-five thousand (INR 25,000/-) each, to the satisfaction of the concerned Investigator/SHO OR the concerned Court, before whom the bonds are required to be furnished. When the bonds are to be furnished before a Judicial Magistrate, then in case of the non-availability of the concerned Judicial Magistrate, to any other nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned officer/court must satisfy that if the accused fails to appear in court, then such surety can produce the accused before the court.

OR

(b). Petitioner(s) to hand over to the concerned investigator/court a fixed deposit for Rs. Ten thousand only (INR 10,000/-), each, with the clause of automatic renewal of the principal and the interest reverting to the linked account, made in favor of the 'Chief Judicial Magistrate' of the concerned district, or blocking the aforesaid amount in favour of the concerned 'Chief Judicial Magistrate'. Said fixed deposit or blocking funds can be from any of the banks where the stake of the State is more than 50% or from any of the well-established and stable private sector banks. In case the bankers are not willing to make a Fixed Deposit in such eventuality it shall be permissible for the petitioner to prepare an account payee demand draft favouring concerned Chief Judicial Magistrate for a similar amount.

(c). Such court shall have a lien over the funds until the case's closure or discharged by substitution, or up to the expiry of the period mentioned under S. 437-A CrPC, 1973, and at that stage, subject to the proceedings under S. 446 CrPC, the entire amount of fixed deposit, less taxes if any, shall be endorsed/returned to the depositor.

(d). The petitioners to also execute a bond for attendance in the concerned court(s) as and when asked to do so. The presentation of the

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personal bond shall be deemed acceptance of the declarations made in the bail petition and all other stipulations, terms, and conditions of section 438(2) of the Code of Criminal Procedure, 1973, and of this bail order.

(e). While furnishing personal bond, the petitioners shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number, (If available), when the court attesting the bonds thinks appropriate or considers the accused as a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

30. The petitioners shall join the investigation as and when called by the Investigating Officer or any Superior Officer; and shall cooperate with the investigation at all further stages as required. In the event of failure to do so, it will be open for the prosecution to seek cancellation of the bail. The petitioner(s) shall be in deemed custody for Section 27 of the Indian Evidence Act. Whenever the investigation occurs within the police premises, the petitioner(s) shall not be called before 8 AM, let off before 6 PM, and shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

31. The petitioners shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the Police officials, or any other person acquainted with the facts and the circumstances of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to tamper with the evidence.

32. Petitioners to comply with their undertakings made in the bail petition, made before this court through counsel as reflected at the beginning of this order. If the petitioner(s) fail to comply with any of such undertakings, then on this ground alone, the bail might be canceled, and the victim/complainant may file any such application for the cancellation of bail, and the State shall file the said application.

33. The bail bonds shall remain in force throughout the trial and after that in Section 437-A of the Cr.P.C., if not canceled due to non-appearance or breach of conditions.

34. The conditions mentioned above imposed by this Court are to endeavour that the accused does not repeat the offence and to provide the person from whom the money was exorted, a sense of security. In Mohammed Zubair v. State of NCT of Delhi,

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2022:INSC:735 [Para 28], Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed."

35. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation as per law.

36. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offence in this FIR, and if the new section prescribes maximum sentence which is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above, then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days providing an opportunity to avail the remedies available in law.

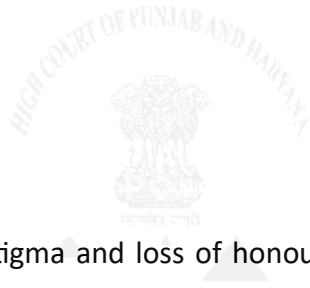
37. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

38. In return for the protection from incarceration, the Court believes that the petitioners shall also reciprocate through desirable behavior.

39. This entire case is a disturbingly startling depiction of what a mockery of the criminal justice system is being made of by certain individuals who are taking blatant bribes under the sacrosanct guise of the authority of law. How distressingly deplorable is the state of affairs when the Investigators, who are the guardians of Law and Order, and the Advocates, who are the officers of Courts, not only allow but also participate in effecting compromises, extorting and accepting bribes and commissions from the alleged accused and suspects, to settle grave allegations like that of rape. These illegal, unethical, and immoral actions deplete the faith and trust of the entire society and primarily of the real affected victims whose interests are the principal concern of a legal justice system.

40. We as a society fear crime as much as we fear criminals, and therefore, what can be more haunting to any individual than the possibility of being labelled as a perpetrator of a heinous crime like sexual assault. False accusations of sexual assault can lead a sensible person to lose his wits under pressure and adopt questionable methods to

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escape the clutches of stigma and loss of honour associated with such allegations. The burden of potentially carrying a tainted reputation for life may cause even a socially well-adjusted human to lose their personality and lose face in front of friends, family, and peers, pushing them towards depression and suicide, putting them under undue financial and emotional strain. Thus, knowingly levelling false allegations of such kind can have devastatingly far-reaching ill effects on one's sense of self, relationships, social standing, and financial and psychological well-being. It is disheartening that our penal laws, which were put in place to protect and defend the survivors of sexual assaults are being used today as a weapon by certain evil-intentioned members of society to extort money from the public for illegal gains or for taking revenge, creating fear in the minds of the targeted people to cause injury to their honour, capitalizing and preying on their fear, vulnerability, and helplessness. This cannot be allowed to go on as it would unravel chaos in the system. It would amount to ridiculing a serious crime like sexual assault, turning it into something frivolous, which can never be the intention of the makers of law.

41. It would be relevant to extract Section 182 of Indian Penal Code, 1860, which reads as follows:

182. False information, with intent to cause public servant to use his lawful power to the injury of another person.—Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations

(a) A informs a Magistrate that Z, a police-officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(b) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

(c) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that in consequence of this information the police will make enquiries and institute searches in the village to the annoyance of the villages or some of them. A has committed an offence under this section.

42. It would also be relevant to extract Section 195 of the Code of Criminal



Procedure, 1973, which reads as follows:

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.—

(1) No Court shall take cognizance—

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term “Court” means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the Principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that—

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

43. In *Daulat Ram v. State of Punjab*, AIR 1962 SC 1206, a three-judge bench of Hon’ble Supreme Court, while dealing with an appeal against conviction under section 182 IPC, referred to the Section 195 of Code of Criminal Procedure, and observed, “What

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the section Contemplates is that the complaint must be in writing by the public servant concerned...”

44. In Santosh Bakshi v. State of Punjab, (2014) 13 SCC 25, Hon’ble Supreme Court holds,

[16]. To make out a case Under Section 182 Indian Penal Code, the following ingredients are to be proved:

- (i) An information was given by a person to a public servant.
- (ii) The information was given by a person who knows or believes such statement to be false.
- (iii) Such information was given with an intention to cause or knowing it to be likely to cause
 - (a) such public servant to do not to do anything if the true state of facts respecting which such information is given were known by him, or
 - (b) to use the lawful power of such public servant to the injury or annoyance of any person.

45. It would also be relevant to extract Section 211 of Indian Penal Code, 1860, which reads as follows:

211. False charge of offence made with intent to injure.—Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

46. In State of Punjab v. Brij Lal Palta, AIR 1969 SC 355, a three-judge bench of Hon’ble Supreme Court holds,

[8] ...The Magistrate can take cognizance of an offence under Section 182 on a complaint in writing of the police officer by virtue of the provisions contained in Section 195 (1) (a) of the Cr. P. Code. But it would virtually lead to the circumvention of the provisions of Section 195 (1) (b) if the proceedings under Section 182 can continue where the offence disclosed is covered by Section 211, Indian Penal Code and a complaint is pending which has been filed by the informant on the same facts and allegations as were contained in his first information report.

47. In ABCD v. Union of India, (2020) 2 SCC 52, Hon’ble Supreme Court holds,

[15]. Making a false statement on oath is an offence punishable Under Section 181 of the Indian Penal Code while furnishing false information with intent to cause public servant to use his lawful power to the injury of another person is punishable Under Section 182 of the Indian Penal Code. These offences by virtue of Section 195(1)(a)(i) of the Code can be taken cognizance of by any court only upon a proper complaint in writing as stated in said Section. In respect of matters coming Under Section 195(1) (b)(i) of the Code, in Pushpadevi M. Jatia v. M.L. Wadhawan etc. (1987) 3

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SCC 367 prosecution was directed to be launched after prima facie satisfaction was recorded by this Court.

48. In *Ram Dhan v. State of U.P.*, (2012) 5 SCC 536, Hon'ble Supreme Court holds,

At least the provisions of Sections 177 and 182 deal with the cases totally outside the court. Therefore, the question of attracting the provisions of Sections 195 and 340 CrPC does not arise. ... It is not necessary that the fabrication of false evidence takes place only inside the court as it can also be fabricated outside the court though has been used in the court. Therefore, it may also not attract the provisions of Section 195 CrPC. (See *Sachida Nand Singh v. State of Bihar* [(1998) 2 SCC 493].

49. In *P.D. Lakhani v. State of Punjab*, (2008) 5 SCC 150, Hon'ble Supreme Court holds,

[11]. Section 182 of the Indian Penal Code, indisputably, provides for an offence falling under Chapter X of the Indian Penal Code. Section 195 provides for prosecution for contempt of lawful authority of public servant, for offences against public servant and for offences relating to documents given in evidence. It contains an embargo stating that 'no court shall take cognizance of an offence punishable, inter alia, under the aforementioned provision except on the complaint in writing by the public servant concerned or by some other public servant to whom he is administratively subordinate'. 'Contempt of a public servant' has a definite connotation. Such contempt must be provided for by law. It must be found to be false.

[15]. ...Section 195 contains a bar on the Magistrate to take cognizance of any offence. When a complaint is not made by the appropriate public servant, the Court will have no jurisdiction in respect thereof. Any trial held pursuant thereto would be wholly without jurisdiction...

50. In *Subhash Chandra v. State of U.P. and Ors.*, (2000)5 SCC 356, Hon'ble Supreme Court directs as follows,

[7]. There are many ingredients set out in Section 182 I.P.C. Unless all the ingredients are established by evidence, the offence cannot be treated to have been committed. In order to ascertain whether the petitioner had committed any offence under Section 182 I.P.C., it is necessary to find out whether all the ingredients constituting an offence under that Section have been proved or not. The petitioner had only filed a complaint under Section 156(3) Cr.P.C. before the court of Special Sessions Judge (DAA), Farrukhabad. It is still to be investigated and found out by that court whether the complaint lodged before that court was false and had been made with the necessary intention or knowledge to induce the court to exercise its lawful power so as to cause injury to respondents 3-6. Once those ingredients are established and the charge is found to have been proved, then alone the court can take cognizance of that offence and proceed in the manner directed by the High Court by the impugned judgment. But the stage at which such directions have been issued is, in our opinion, premature.

51. Despite levelling serious allegations, the complainant/informant 'K' turned hostile and did not support the initial version in the FIR, indicating that the initial implication was probably honey trapping and sextortion.

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52. This case is not a sole isolated case when, after lodging serious allegations of sexual assault, the statements by the alleged victim of sexual assault are retracted. Considering the nature of the allegations that came to this Court's notice, it would be essential and appropriate to issue the following directions to be conveyed to all the concerned police officers and investigators.

53. To curb the menace of sextortion and false accusations on various counts, the Investigator(s) /supervisory officer(s), in the cases involving sexual offences, when the complainant/victim(s) resile from their initial version(s), must make that report part of police proceedings. After that, they must immediately send the file to the concerned Superintendent of Police, who shall transfer the investigation to themselves, or to another investigating officer duly monitored by an IPS Officer or DySP. Before filing a cancellation report, the Investigator must verify whether any amount or any consideration, in shape of any valuables or in kind is paid to any official/officer or the complainant/victim by or on behalf of the accused named in the FIR for compromise or for retracting the earlier statement(s). The supervising officer must inquire whether the complainant/ victim had not received any financial benefits or was not threatened, intimidated, or put under duress for such retraction of the initial accusation. If, in the inquiry, the Investigator is able to collect sufficient evidence that the victim(s) or complainant was/were not under any threat, intimidation, or coercion, then the concerned public servant must consider initiating proceedings for violation of Section 182 of the Indian Penal Code, 1860, as and when the stage comes, following the law, also ensuring that such a complaint does not get barred under limitation prescribed under section 468 of Code of Criminal Procedure, 1973. Suppose they do not proceed to prosecute or take a contrary stand; in such a situation, the concerned Superintendent of Police must forward the reasons for not filing the complaint to the Director General of Police, who shall take a final decision, either themselves or by delegating it to any officer of the IPS cadre. Non-compliance to be entered in their service records.

54. **The Director General of Police, Haryana, is directed to issue general directions in terms of this order by March 31, 2024, to all Superintendent of Police, all officers in charge of Police Stations, and all Station House Officers as and when they find violation of Section 182 IPC.**

55. Such directions aim to secure the interests and welfare of both the survivors of sexual assault so that they are not dominated and highhanded into making illegal compromises, as well as of an alleged accused person, whose truth is yet to be tested, and innocent people are not trapped by malicious allegations of sexual assault.

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56. **Petition allowed in aforesaid terms.** All pending applications, if any, stand disposed.

57. Registry to send a copy of this order to the following:

1. Director General of Police, Haryana, for compliance.
2. Director General of Police, Punjab for information and to consider issuing similar directions.
3. Director General of Police, Union Territory of Chandigarh, for information and to consider issuing similar directions.

A photocopy of this order be placed on the file of the other connected case.

**(ANOOP CHITKARA)
JUDGE**

February 29, 2024
AK/Jyoti

Whether speaking/reasoned : Yes
Whether reportable : Yes